UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION SIX

ARMSTRONG COUNTY MEMORIAL HOSPITAL
D/B/A ACMH HOSPITAL

Employer — Case 06-RC-112648

and

PENNSYLVANIA ASSOCIATION OF STAFF
NURSES AND ALLIED PROFESSIONALS
(PASNAP)

Petitioner

and

ARMSTRONG NURSES ASSOCIATION,
HEALTHCARE/PSEA, AFT HEALTHCARE,
LOCAL 5120, AFL-CIO

Intervenor[1]

REGIONAL DIRECTOR'S DECISION AND DIRECTION OF ELECTION

The Employer, Armstrong County Memorial Hospital d/b/a ACMH Hospital, operates an acute care, short term hospital in Kittanning, Pennsylvania, where it employs over 1000 employees. The Petitioner, Pennsylvania Association of Staff Nurses and Allied Professionals (PASNAP), filed a petition with the National Labor Relations Board under Section 9(c) of the National Labor Relations Act seeking to represent a unit of all full-time and regular part-time professional registered nurses employed at the Kittanning facility. The Intervenor, Armstrong Nurses Association, Healthcare/PSEA, AFT Healthcare, Local 5120, AFL-CIO, intervened in the proceeding based on its expired contract with the Employer covering the same bargaining unit

[1] The names of both the Employer and the Intervenor appear as stipulated by the parties.

herein sought by the Petitioner.[2] A hearing officer of the Board held a hearing[3] and the parties filed timely briefs with me.[4]

As evidenced at the hearing and in the briefs, the parties disagree on the following issue: the manner in which the identities of the labor organizations involved should be shown on the ballots in the election I have directed herein.

The Employer has declined to take any position on this issue while also declining to recognize the Petitioner as the exclusive collective bargaining representative of the petitioned-for unit. The Intervenor contends that each and every labor organization with which both the Petitioner and the Intervenor are associated and/or affiliated with should be listed after its name on the ballot in any election to be directed. Contrary to the Intervenor, the Petitioner contends that only the legal name of the individual organizational entity itself should be used. The parties have stipulated to the appropriateness of the unit with respect to both the scope and composition sought by the Petitioner, which coincides with the unit which has been historically represented by the Intervenor. The record indicates that the unit contains approximately 270 employees.

I have considered the evidence and the arguments presented by the parties on the issues presented. As discussed below, I have concluded that the individual names of both the Petitioner and Intervenor should be used on the ballots, without reference to any other labor organization which may appear to be related in some manner to either of these labor

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[2] Although an AFL-CIO Article XX no-raiding proceeding which involves these parties is pending, the Board does not defer the resolution of a question concerning representation to a private dispute resolution mechanism. See, *Jackson Engineering Co.*, 265 NLRB 1688, 1701 (1982); *Anheuser-Busch, Inc.*, 246 NLRB 29 (1979); *Great Lakes Industries*, 124 NLRB 353 (1959); *Weather Vane Outerwear Corp.*, 233 NLRB 414 (1977).

[3] After I became aware of the pending Article XX matter and following a delay in the processing of this petition in excess of 30 days (See CHM sections 11017–11019), I rescheduled the instant hearing. The Intervenor then filed a Motion to Reinstate Deferral which I denied by Order dated October 22, 2013.

[4] In its post-hearing brief, the Intervenor renewed its Motion to Reinstate Deferral in order to postpone an election until the conclusion of the compliance phase of the Article XX proceeding. I hereby deny that Motion for the same reasons set forth in my October 22nd Order. See also, fns. 2 and 3, supra. The Employer did not file a brief.

organizations. Accordingly, I have directed an election in a unit that consists of approximately 270 employees. To provide a context for my discussion of the issues, I will first provide an overview of the situation presented here. Then, I will present in detail the facts and reasoning that supports my conclusions on the issues.

I. OVERVIEW OF COLLECTIVE BARGAINING HISTORY

The Employer operates an acute care, short term hospital in Kittanning, Pennsylvania. In these operations, the Employer employs over 1000 employees, including the approximately 270 registered nurses who are at issue in this proceeding.

The Intervenor was certified by the Board in Case 06-RC-11591, on December 2, 1998, as representative of the Employer's registered nurses (the Unit). At that time, the certification issued in the name of "Armstrong Nurses Association/PSEA Health Care." In Case 06-AC-84, the certification was amended to read "Armstrong Nurses Association, HealthCare-PSEA."[5] The Intervenor has continued to represent the Unit and the most recent contract between the parties was effective by its terms for the period from September 1, 2011, until December 31, 2013.[6]

A. The Labor Organizations Involved

The cover page of the parties' expired contract designates the name of the Intervenor as "Armstrong Nurses Association/HealthCare-PSEA. At the bottom of the cover page, the words "HealthCare-PSEA" are repeated, along with an outline of a stethoscope which resembles a type of logo, and under those words, in very small letters "Local 5120 AFT, AFL/CIO" appears. The recognition clause of that collective bargaining agreement, at Article 3, references only "the Association" as the representative of the Unit. The record is devoid of any information as to the nature of any relationship existing between the Intervenor and the American Federation of

[5] I take administrative notice of the Decision and Order issued October 24, 2000, in Case 06-AC-84.

[6] The record does not indicate if any negotiations for a successor to that agreement occurred.

Teachers (AFT),[7] any designation of a local affiliation by the AFT to the Intervenor, or any membership of the Intervenor in the AFL-CIO. The record further does not reveal the timing of any of these alliances which may or may not have occurred after the Board's Certification of Representative and the subsequent Amendment of Certification of the Intervenor.[8] The record is thus devoid of evidence as to any representative functions of the AFT, AFT Healthcare, or the AFL-CIO with respect to the Unit.[9] However, the record does reveal that the AFT is a member of the national AFL-CIO.

On September 5, 2013, the Petitioner filed the instant petition for the Unit represented by the Intervenor. The record indicates that the Petitioner has been in existence since 2000, and currently represents about 5000 employees employed in facilities located within the Commonwealth of Pennsylvania under the terms of 16 separate collective bargaining agreements. Petitioner is a member of the Pennsylvania AFL-CIO.

The Petitioner has a current affiliation agreement with California Nurses' Association (CNA), which is effective by its terms for the period from June 30, 2011, until June 30, 2015. While Petitioner is liable for a monthly per capita payment to CNA, that agreement confers no trusteeship ability to CNA over the Petitioner, and specifically states that the Petitioner retains its own internal governance. The agreement further provides that this affiliation does not grant CNA any input into or control over the collective bargaining functions of the Petitioner. In this regard, the agreement specifies that, after affiliation, the Petitioner retains "continuity of representation" within the meaning of "applicable labor law and labor board policies."

The record further reveals that CNA is a state organization which is itself affiliated with the National Nurses Organizing Committee. They are referred to as "CNA/NNOC." It also appears that CNA/NNOC are affiliates of the National Nurses United (NNU) which is also a

[7] I note that although the Intervenor claims to be affiliated with "AFT Healthcare" there is no evidence concerning that entity in this record.

[8] I note that the Region 6 files do not reveal that any additional Amendment of Certification (AC) petition for this Unit being filed subsequent to the Decision and Order referenced above in footnote 5.

[9] Although the expired contract for this Unit is in evidence, the signature page was omitted.

national labor organization. The record also establishes that the NNU is a member of the national AFL-CIO.

B. The Issue Presented

As mentioned above, the parties agree as the scope and composition of the petitioned-for Unit. No eligibility issues were raised by any party and, at the hearing, the parties stipulated to the use of the formula enunciated in *Davison-Paxon Co.,* 185 NLRB 21 (1970), to determine the voting eligibility of casual employees employed as registered nurses. The only issue to which the parties could not agree is the precise names to be used on the Board election notices and the ballots for the Petitioner and the Intervenor in the election I have directed herein.

II. POSITIONS OF THE PARTIES

A. The Intervenor

The Intervenor asserts that it is willing to identify itself with reference to all of its affiliated unions, including HealthCare PSEA, AFT Healthcare, Local 5120 and the AFL-CIO. Thus, the Intervenor asserts it would be shown on the ballot as:

> Armstrong Nurses Association,
> Healthcare-PSEA, American Federation of
> Teachers (AFT) Healthcare,
> Local 5120, AFL-CIO

The Intervenor further asserts that the Petitioner should be similarly identified, and would have its name be shown on the ballot as:

> Pennsylvania Association of Staff Nurses
> and Allied Professionals (PASNAP),
> California Nurses Association-National
> Nurses Organizing Committee
> (CNA-NNOC) and National Nurses United
> (NNU), AFL-CIO

The Intervenor asserts that all affiliations or constituents of either participating labor organization should be expressly identified in the interests of due process protection to the employees who are choosing representation and precise identification of the putative bargaining

representative of those employees. The Intervenor takes the position that the employees should be fully informed as to the identities of any other labor organizations associated with the labor organization who might become their representative for purposes of collective bargaining.

B. The Petitioner

The Petitioner asserts its name should be placed on the ballot in the manner listed on the petition it filed and as shown in the caption of this case. The Petitioner took no position as to the name to be used on the ballot for the Intervenor.

The Petitioner avers that it filed the instant petition using the same name that it has used in every instance of petitioning for representation during its existence, except for one situation in which joint representation was sought. The Petitioner asserts that its name, without affiliations, is the manner in which it holds itself out to employees, employers, and the Board. In its brief, the Petitioner further states that the name suggested by the Intervenor is not its name as shown on the authorization cards which were given by Petitioner to Unit employees.[10] Thus, the Petitioner asserts that using a name other than the one it traditionally uses for purposes of a representation election and did use in its organizing campaign for the Unit, could create a situation more confusing for the employees who will be voting.

C. The Employer

The Employer declined to take a position on the names to be used for the participating labor organizations for the purposes of the election.

III. LEGAL STANDARDS AND ANALYSIS

In *Lane Wells Company,* 79 NLRB 252 (1948), in a situation involving an international union and one of its locals, the Board stated that it lacked the authority to refuse a petitioning labor organization the right to appear alone on the ballot and be certified as an exclusive

[10] I note, however, that an authorization card was not offered into evidence or made a part of the record in this matter.

representative, even though the two labor organizations involved were clearly affiliated. There are many cases which discuss the need for consideration of the identity of a bargaining representative following changes in the petitioner's name, due to disaffiliations or other reasons. In *Louisiana Creamery, Inc.,* 120 NLRB 170 (1958), the petitioner was expelled from the AFL-CIO, at a time after it had secured a showing of interest from the employees. The employer contended that, prior to the election, a new showing of interest was necessary. The Board found that removing the AFL-CIO designation from the petitioner's name for the election was sufficient to correct any ambiguity. Further, the Board has held that disaffiliation of a union from the AFL–CIO does not, standing alone, create a question concerning representation. *Laurel Baye Healthcare of Lake Lanier,* 346 NLRB 159 (2005); *New York Center for Rehabilitation Care,* 346 NLRB 447 (2006).

In *Woods Quality Cabinetry Company,* 340 NLRB 1355 ((2003), the Board set aside an election where "AFL-CIO" was listed in error after the petitioner's name. The Board found this error in affiliation was material to the campaign and therefore significantly impacted employees' choice. Similarly, in *The Humane Society for Seattle/King County,* 356 NLRB No. 13 (2010), the Board relied on strong evidence of employee confusion over the petitioner's identity, in order to set aside an election.

Initially, I note that there is no evidence that the identity of any affiliations of the Petitioner or the Intervenor that may exist is of compelling interest to the Unit employees. There is also a lack of evidence as to why the absence of affiliated organizations on the ballot would alter the identity of either the Petitioner or the Intervenor to a degree that would cause confusion among the voters. In this regard I note that there is a paucity of evidence that the Petitioner has identified itself to employees as the "NNU" or that the Intervenor has held itself out to employees as "AFT Healthcare."

The Intervenor focuses on the necessity for listing all associations of Petitioner with other labor organizations on the ballots …"to ensure that voters are adequately informed,

confusion is kept to a minimum and the chance of post-election challenges remote."[11] Such a recitation of affiliates is not required by the Board's standard practices and, in fact, appears contrary to the proposition set forth in *Lane Wells,* supra. Further, it is axiomatic that if an organization is listed on the ballot, it would then also be set forth on any Certification of Representative which would issue. Having multiple labor organizations on a Certification of Representative would appear to set the stage for confusion as to the entity with whom the Employer has a duty to bargain. In this regard I also note that the Board's procedure for labor organizations to petition for representation by joint parties has not been invoked in this proceeding.

The Intervenor further contends that due process requires disclosure of the Petitioner's affiliations. In *NLRB v. Financial Institution Employees*, 475 U.S. 192 (1986) (*Seattle-First*), cited by the Intervenor, the Supreme Court set forth standards for determining whether a change in the affiliation status of a certified union raises a question concerning representation. For many years, the Board had a "due process" requirement for union affiliation matters. In *Raymond F. Kravis Center for the Performing Arts,* 351 NLRB 143 (2007), the Board abandoned that requirement in light of the Supreme Court's *Seattle-First* decision, and now requires only "substantial continuity" the pre and post-affiliation bargaining representative. I note that such an inquiry is inapplicable under the facts presented here.

The evidence reveals that in this case, the Petitioner wishes to utilize the same name previously used by it in other Board representation matters.[12] Further evidence of the name of

[11] The Intervenor also argues that the pending Article XX compliance proceeding may soon void some of the Petitioner's affiliations that it at the same time contends must be listed on the ballots. The fact that there is a possibility of a change in the Petitioner's affiliations prior to the election indicates that the more prudent course of action, even absent the above referenced precedent, would be to omit the names of other related entities which may cease to be related.

[12] I take administrative notice of NLRB Cases 04-RC-071635 and 04-RC-093135, both filed during the term of the current affiliation agreement between the Petitioner and the CNA. I also take notice that Case 06-CA-093135 resulted in a Certification of Representative of the Petitioner and that the Certification does not extend to any affiliated organizations.

the Petitioner is found in its organizational Constitution.[13] The record establishes that the Petitioner has used only its own name, without any affiliates or associated entities which may exist, in other collective bargaining relationships with other employers.[14]

Based on the above and the record as a whole, I find that only the names of the Petitioner and the Intervenor, without affiliates, will appear on the ballots in the election I have directed. *Lane Wells,* supra. I further find that placing other entities on the ballot is unnecessary as there is no evidence in this record that employees will be confused by their absence or that these affiliations are of compelling interest to the employees in the Unit.

To the extent that the Intervenor wishes to be identified on the ballot with the other labor organizations with which it is affiliated, I note that there is no evidence of representation functions for this Unit being performed by these other labor organizations and no evidence that these other organizations wish to be placed on the ballot. I therefore see no purpose to be served by their inclusion, which would not be in accord with the Intervenor's Certification of Representative, as amended.

To the degree that the Intervenor is concerned that employees may be unaware of possible changes in the affiliations of the Petitioner, that concern may be remedied during the campaign. If such changes occur and if another party views those changes as important to the employees' choice of their bargaining representative, that party has a right under Section 8(c) of the Act to lawfully disseminate that information and express its views to the employees prior to the election.

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[13] I take official notice of this document which is found in the public domain.

[14] As noted herein, the Petitioner further contends that only its name was on the authorization cards which comprise the showing of interest in this case and which were signed by the same Unit employees who will vote in the upcoming election. [See, *Peabody Coal Company,* 197 NLRB 1231, fn. 1 (1972) in which the Board granted a petitioner's motion to amend its name, noting both that there was no showing that employee confusion would result if the petitioner's name as amended as listed on the ballot and the name requested by the petitioner was the same as the name on the authorization cards signed by employees.] Inasmuch as the record herein is inconclusive as to this assertion, it is not the basis of my decision in this matter.

The Petitioner will be identified consistent with its public documentation, its past practice, and Board precedent. The Intervenor will be identified in the manner it was certified as the collective bargaining representative of the Unit, as amended.[15] Despite any possible disaffiliations which may occur in the near future, I find this procedure will accurately describe the participating labor organizations and, most importantly, best protect the interests of the employees in the petitioned-for Unit as the employees should be able to easily recognize and identify the entities involved while casting their ballots. See *Louisiana Creamery,* supra.

Accordingly, I shall direct an election in which the ballot choices will reflect only the names of the Petitioner and the certified Intervenor, without reference to any other affiliated or associated labor organizations to which they may be related, as follows:

Pennsylvania Association of Staff Nurses
and Allied Professionals

and

Armstrong Nurses Association,
HealthCare-PSEA

IV. FINDINGS AND CONCLUSIONS

Based upon the entire record in this matter and in accordance with the discussion above, I find and conclude as follows:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are affirmed.

2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction in this matter.

3. The Petitioner and the Intervenor both claim to represent certain employees of the Employer.

[15] See fn. 5, supra.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

5. The following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

> All full-time and regular part-time employees, including certain casual employees,[16] employed as Registered Nurses by the Employer at its Kittanning, Pennsylvania, facility; excluding all office clerical employees and guards, professional employees and supervisors as defined in the Act, and all other employees.

V. DIRECTION OF ELECTION

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. The employees will vote whether or not they wish to be represented for purposes of collective bargaining by Pennsylvania Association of Staff Nurses and Allied Professionals, or Armstrong Nurses Association, HealthCare-PSEA, or Neither. The date, time and place of the election will be specified in the notice of election that the Board's Regional Office will issue subsequent to this Decision.

A. Voting Eligibility

Eligible to vote in the election are those in the unit who were employed during the payroll period ending immediately before the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as

[16] Casual Registered Nurses eligible to vote will be those employees who have worked an average of 4 hours per week for the 13 week period preceding the issuance of this Decision and Direction of Election. *Davison-Paxon Co*., supra.

their replacements are eligible to vote. Unit employees in the military services of the United States may vote if they appear in person at the polls.

Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

B. Employer to Submit List of Eligible Voters

To ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses, which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 394 U.S. 759 (1969).

Accordingly, it is hereby directed that within 7 days of the date of this Decision, the Employer must submit to the Regional Office an election eligibility list, containing the full names and addresses of all the eligible voters. *North Macon Health Care Facility*, 315 NLRB 359, 361 (1994). The list must be of sufficiently large type to be clearly legible. To speed both preliminary checking and the voting process, the names on the list should be alphabetized (overall or by department, etc.). This list may initially be used by me to assist in determining an adequate showing of interest. I shall, in turn, make the list available to all parties to the election.

To be timely filed, the list must be received in the Regional Office on or before **November 20, 2013**. No extension of time to file this list will be granted except in extraordinary circumstances, nor will the filing of a request for review affect the requirement to file this list. Failure to comply with this requirement will be grounds for setting aside the election whenever proper objections are filed. The list may be submitted to the Regional Office by electronic filing, by mail, or by facsimile transmission at 412-395-5986. To file the eligibility list electronically, go

to the Agency's website at **www.nlrb.gov**, select **File Case Documents**, enter the NLRB Case Number, and follow the detailed instructions. The burden of establishing the timely filing and receipt of the list will continue to be placed on the sending party.

Since the list will be made available to all parties to the election, please furnish a total of **two (2)** copies of the list, unless the list is submitted by facsimile or e-mail, in which case no copies need be submitted. If you have any questions, please contact the Regional Office.

C. Notice of Posting Obligations

According to Section 103.20 of the Board's Rules and Regulations, the Employer must post the Notices to Election provided by the Board in areas conspicuous to potential voters for at least 3 working days prior to 12:01 a.m. of the day of the election. Failure to follow the posting requirement may result in additional litigation if proper objections to the election are filed. Section 103.20(c) requires an employer to notify the Board at least 5 full working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. *Club Demonstration Service*s, 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on nonposting of the election notice.

VI. RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, DC 20570-0001. This request must be received by the Board in Washington by **November 27, 2013.** The request may be

filed electronically through the Agency's website, www.nlrb.gov,[17] but may not be filed by facsimile.

DATED: November 13, 2013.

/s/Robert W. Chester
Robert W. Chester, Regional Director
NATIONAL LABOR RELATIONS BOARD
Region Six
William S. Moorhead Federal Building
1000 Liberty Avenue, Room 904
Pittsburgh, PA 15222

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[17] To file the request for review electronically, go to www.nlrb.gov, select **File Case Documents**, enter the NLRB Case Number, and follow the detailed instructions.